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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

GREGORY RICKS and STEPHANIE  
PENNINGTON, individually and on behalf of  
all other similarly situated individuals,

Plaintiffs,

v.

LOWE'S COMPANIES, INC. and LOWE'S  
HOME CENTERS, LLC,

Defendants.

Case No.:

20cv515

**CLASS ACTION COMPLAINT AND  
JURY DEMAND**

Plaintiffs GREGORY RICKS and STEPHANIE PENNINGTON (collectively "Plaintiffs"), individually and on behalf of all others similarly situated, by and through their attorneys, hereby bring this Class Action Complaint against Defendants LOWE'S COMPANIES, INC. and LOWE'S HOME CENTERS, LLC (collectively "Defendants"), and state as follows:

**INTRODUCTION**

1. This is a class action brought pursuant to Fed. R. Civ. P. 23 by Plaintiffs,

1 individually and on behalf of all similarly situated persons employed by Defendants, arising from  
2 Defendants' willful violations of the Nevada Wage and Hour Law, NRS §§ 608.005, *et seq.*  
3 ("Nevada Wage Act").

4         2. Defendants are an American retail company specializing in home improvement.  
5 Headquartered in Mooresville, North Carolina, Defendants operate a chain of retail stores in the  
6 United States, Canada, and Mexico. As of 2019, Defendants and their related businesses operate  
7 more than 2,000 home improvement and hardware stores and employ over 245,000 people  
8 in North America.

9         3. In order to effectively operate their chain of retail stores, Defendants employ non-  
10 exempt hourly managers, including Department Managers, Service Managers and Support  
11 Managers (hereinafter collectively referred to as "Hourly Managers"), to supervise and oversee  
12 the retail stores, or various departments within the retail stores, and to manage the retail stores'  
13 employees.

14         4. Defendants require their Hourly Managers to work a full-time schedule, plus  
15 overtime. However, Defendants do not compensate their Hourly Managers for all hours worked;  
16 instead, Defendants require their Hourly Managers to perform compensable work tasks before  
17 and after their scheduled shifts and during their unpaid meal periods, when they are not clocked  
18 into Defendants' timekeeping system. These policies result in Hourly Managers not being paid  
19 for all time worked, including overtime.

20         5. More specifically, Defendants maintain and have maintained a policy and practice  
21 of failing to pay Plaintiffs and Hourly Managers for time spent reading and responding to work-  
22 related smartphone communications during non-work hours, including during unpaid meal  
23 periods, or for being required to report early for work to perform a perimeter check of the  
24 premises by slowly driving their vehicles around the outer perimeter of the retail store to ensure  
25 that nothing out of the ordinary has occurred overnight. Plaintiffs and Hourly Managers perform  
26 other pre- and post-shift work tasks that go uncompensated, such as unlocking and locking the  
27 main entrance, arming and disarming the alarm system, and logging into and out of Defendants'  
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1 computer system. Plaintiffs and Hourly Managers spend significant time performing this off-the-  
2 clock work, but Defendants do not compensate them for it. Because much of this time qualifies  
3 as overtime within the meaning of applicable state laws, Plaintiffs and Hourly Managers are  
4 owed overtime pay for this uncompensated, off-the-clock work.

5 6. The individuals Plaintiffs seek to represent in this action are current and former  
6 Hourly Managers who are similarly situated to each other in terms of their positions, job duties,  
7 pay structure, and Defendants' violations of state law.

8 7. Defendants knew or could have easily determined how long it takes Hourly  
9 Managers to complete their off-the-clock work, and Defendants could have properly  
10 compensated Plaintiffs and the putative Class for this work, but deliberately chose not to.

11 8. Plaintiffs seek a declaration that their rights, and the rights of the Class members,  
12 were violated, an award of unpaid wages and liquidated damages, injunctive and declaratory  
13 relief, attendant penalties, and an award of attorneys' fees and costs to make them whole for  
14 damages they suffered, and to ensure that they and future workers will not be subjected by  
15 Defendants to such illegal conduct in the future.

#### 16 **JURISDICTION**

17 9. This Court has original jurisdiction over this action pursuant to the Class Action  
18 Fairness Act of 2005, 28 U.S.C. § 1332(d). This is a class action in which the aggregate claims  
19 of the individual Class members exceed the sum value of \$5,000,000 exclusive of interest and  
20 costs, there are believed to be in excess of 100 Class members, and at least some members of the  
21 proposed Class have a different citizenship than Defendants.

22 10. The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant  
23 to 28 U.S.C. § 1367 because the state law claims and the federal claims are so closely related that  
24 they form part of the same case or controversy under Article III of the United States  
25 Constitution.

26 11. The Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C.  
27 §§ 2201 and 2202.

1           12.     The Court also has diversity jurisdiction over Plaintiffs' claims pursuant to 29  
2 U.S.C. § 1332, as the parties are completely diverse and the amount in controversy exceeds  
3 \$75,000.00.

4           13.     The Court has personal jurisdiction over Defendants because Defendants conduct  
5 business within the state of Nevada, employ individuals within the state of Nevada, and are  
6 registered with the Nevada Secretary of State.

7           14.     Personal jurisdiction also applies to Defendants because Defendants have  
8 purposefully availed themselves of the privilege of conducting activities in the state of Nevada  
9 and have established minimum contacts sufficient to confer jurisdiction over them; and the  
10 assumption of jurisdiction over Defendants will not offend traditional notions of fair play and  
11 substantial justice and is consistent with the Constitutional requirements of due process.

12                               **VENUE**

13           15.     Venue is proper in the District of Nevada because a substantial portion of the  
14 events forming the basis of this suit occurred in this district.

15                               **PARTIES**

16           16.     Plaintiff GREGORY RICKS ("Plaintiff Ricks") is a Nevada resident who worked  
17 as a Flooring Department Manager at Sunrise Lowe's, 2875 E. Charleston Blvd., Las Vegas,  
18 Nevada 89104 (Store #1620) from March 2013 until February 2018. Defendants compensated  
19 Plaintiff Ricks through the payment of an hourly wage of approximately \$20.26 per hour.

20           17.     Plaintiff STEPHANIE PENNINGTON ("Plaintiff Pennington") is a Nevada  
21 resident who worked for Defendants at the C. Las Vegas Lowe's Store (Store #1639) at 4625  
22 West Charleston Blvd Las Vegas, NV 89102 as Department Supervisor from September 2018 to  
23 July 2019; Service Manager Zone 1 from July 2018 to September 2018; Back End Support  
24 Manager from July 2017 to July 2018; Appliance Sales Specialist from February 2017 to July  
25 2017; Department Manager Inside Lawn & Garden from 2015 to February 2017. Defendants  
26 compensated Plaintiff Pennington through the payment of an hourly wage of approximately  
27 \$22.04 per hour.

1           18. Defendant LOWE'S COMPANIES, INC. is a North Carolina corporation with a  
2 Principal Office at 1000 Lowe's Blvd, Mooresville, North Carolina 28117-8520.

3           19. According to Defendant Lowe's Companies, Inc.'s website, it has 17 stores in the  
4 State of Nevada. Lowes.com, *Nevada*, available at [https://www.lowes.com/Lowes-](https://www.lowes.com/Lowes-Stores/Nevada/NV)  
5 *Stores/Nevada/NV* (last accessed Mar. 2, 2020).

6           20. Defendant LOWE'S HOME CENTERS, LLC is a North Carolina limited liability  
7 company with a Principal Office at 1605 Curtis Bridge Rd, Wilkesboro, North Carolina 28697-  
8 2231. Defendant Lowe's Home Centers, LLC's Registered Agent for service of process is  
9 Corporation Service Company.

10           21. According to business news website Bloomberg.com, Lowe's Home Centers LLC  
11 retails home improvement, building materials, and home appliances; its address is: 1605 Curtis  
12 Bridge Road Wilkesboro, NC 28697 United States of America; it was founded on October 13,  
13 1958; and it currently employs 209,850 employees. Bloomberg.com, *Lowe's Home Centers LLC*,  
14 available at <https://www.bloomberg.com/profile/company/0579589D:US> (last accessed Feb. 6,  
15 2020).

16           22. Upon information and belief, Defendants have employed thousands of Hourly  
17 Managers—including Plaintiffs—in the applicable time period to perform services that include  
18 supervising and overseeing the retail stores, or various departments within the retail stores, and  
19 managing the retail stores' employees.

20                           **GENERAL ALLEGATIONS**

21           23. Defendants employed Plaintiffs as Hourly Managers in the state of Nevada. In  
22 that position, Plaintiffs were compensated pursuant to an hourly wage and typically worked a  
23 rotating schedule consisting of five to six days and up to 40 or more hours each week, resulting  
24 in overtime hours on a weekly basis.

25           24. Throughout their employment with Defendants, Plaintiffs were required to work a  
26 substantial amount of unpaid time, including overtime, as part of their jobs as Hourly Managers.

27           25. Defendants' Department Managers are responsible for, among other things: (a)  
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1 opening and closing the retail store; (b) leading and enabling a team of associates to deliver the  
2 best possible customer experience in the store by coaching and training associates, managing  
3 performance, and ensuring adequate department coverage at all times; (c) assuming  
4 responsibility for both customer facing activities (e.g., greeting customers, clarifying needs and  
5 identifying solutions, and closing sales) and non-facing activities (e.g., down stocking, inventory  
6 management, and area recovery); (d) ensuring his/her area of the store is in-stock and customer  
7 ready at all times while inspiring engaging, customer-focused behavior and driving his/her team  
8 to achieve sales and margin goals; (e) keeping management informed, delegating and following-  
9 up on daily tasks, and maintaining a clean, safe and secure work environment; (f) supervising  
10 associates in his/her own area; (g) leading associates in other departments, as needed, to meet the  
11 demands of the store, which requires broad product knowledge and the ability to engage  
12 associates and customers across departments; (h) at times, serving as manager-on-duty (MOD);  
13 and (i) moving large, bulky and/or heavy merchandise and performing tasks that may require  
14 prolonged standing, sitting, and other activities necessary to perform job duties.

15         26. Defendants' Service Managers are responsible for, among other things: (a)  
16 opening and closing the retail store; (b) enabling and empowering a team of Customer Service  
17 Associates ("CSAs") to deliver the best possible customer service experience in the store by  
18 assuming responsibility for customer facing activities on the sales floor (e.g., greeting customers,  
19 listening and probing to understand needs, and identifying solutions), as well as non-customer  
20 facing activities (e.g., down stocking, inventory management and area recovery); (c) ensuring  
21 department(s) are customer ready at all times while inspiring engaging, customer-focused  
22 behavior, mitigating and reducing customer complaints, and driving positive first impressions for  
23 customers upon entering the store; (d) coaching, mentoring, training, and continually monitoring  
24 CSAs in their assigned areas; (e) leading CSAs in other departments, as needed, to meet the  
25 demands of the store, which requires broad product knowledge and the ability to engage  
26 employees and customers across departments; and (f) moving large, bulky and/or heavy  
27 merchandise and performing tasks that may require prolonged standing, sitting, and other  
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1 activities necessary to perform job duties.

2       27. Defendants' Support Managers are responsible for, among other things: (a)  
3 opening and closing the retail store; (b) planning, scheduling, monitoring, and successfully  
4 implementing all non-selling operations in the front-end of the store (i.e., cashier and  
5 administrative functions); (c) facilitating the store's ability to provide a superior customer  
6 shopping experience and maximize sales and profitability by overseeing the Administrative  
7 office, researching shortages or overages, depositing cash in the bank, handling register pulls and  
8 loans, managing exchange and loaner accounts, and monitoring Customer Service desk activity;  
9 (d) planning, scheduling, monitoring, and successfully implementing all non-selling operations  
10 in the back-end of the store (during the overnight shift or the Night Ops role); (e) leading a team  
11 responsible for critical support processes including receiving and stocking inventory, assembling  
12 product, and delivery; (f) training associates, managing performance, and creating schedules for  
13 the team to ensure adequate department coverage at all times; (g) collaborating and  
14 communicating with peers on the leadership team to ensure that critical information is being  
15 shared and to determine the most effective methods for meeting service objectives and customer  
16 needs; and (h) moving large, bulky and/or heavy merchandise and performing tasks that may  
17 require prolonged standing, sitting, and other activities necessary to perform job duties.

18       28. Defendants require their Hourly Managers to clock in/out for their shifts but do  
19 not accurately record the Hourly Managers' compensable work time as required by law.

20       **A. The Kronos Timekeeping System**

21       29. All hourly employees—including Hourly Managers—across all of Defendants'  
22 retail stores use the computer software program "Kronos" to track their hours worked for  
23 purposes of compensation.

24       30. The Kronos timekeeping system, however, fails to properly account for and  
25 compensate Hourly Managers for all time worked, including their overtime hours, during each  
26 day and during each workweek. This is because Hourly Managers are required to perform  
27 compensable work tasks before and after their shifts and outside of the retail store, when they are  
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1 unable to log into the Kronos timekeeping system. This policy results in Hourly Managers not  
2 being paid for all time worked, including overtime.

3 31. Hourly Managers cannot log into the Kronos timekeeping system (i.e., “punch in”  
4 or “punch out”) until they are physically inside the retail store where Defendants’ desktop  
5 computer is available. In fact, hourly employees cannot log into the Kronos timekeeping system  
6 unless they are ground-connected to Defendants’ internet system, meaning they cannot log into  
7 Kronos using Wi-Fi or any other wireless technology, which is to say that hourly employees  
8 cannot log into Kronos for purposes of tracking their time unless and until they are physically  
9 inside the retail store.

10 32. Thus, it is impossible for hourly employees, including Hourly Managers, to log  
11 into Kronos before entering a Lowe’s retail store, meaning that Hourly Managers who are  
12 responsible for performing any work activities outside of the retail store—such as conducting  
13 perimeter checks, unlocking the main entrance, and disarming the alarm system—necessarily  
14 perform these activities *before* “punching in” to Kronos, i.e., off the clock. In fact, *all* activities  
15 that take place outside of the store location go uncaptured by the Kronos system.

16 33. Hourly employees are only compensated for the time spent logged into the  
17 Kronos timekeeping system, meaning that any time worked “off the clock” that is not inputted  
18 into Kronos goes unpaid. Hourly Managers have override capability to retroactively adjust other  
19 employees’ work hours as recorded in Kronos, but cannot retroactively adjust their own work  
20 hours because that feature is blocked within Kronos.

21 34. Every Lowe’s retail store has a main entrance that must be locked and unlocked  
22 and an alarm system that must be armed and disarmed when the retail store opens and closes  
23 each morning and each evening, meaning that certain work activities—namely, opening and  
24 closing the retail store itself—necessarily occur at *every* Lowe’s retail store but cannot be  
25 captured by the Kronos timekeeping system.

26 **B. Pre-Shift Off-the-Clock Work**

27 35. Plaintiffs and the Hourly Managers work a rotating schedule requiring them to  
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1 work five to six days per week and are required to open the retail store multiple times per week.

2 36. Pursuant to Defendants' policies, training and direction, Hourly Managers  
3 responsible for opening the retail store are required to perform a series of essential work tasks  
4 *before* their scheduled shift and *before* clocking into the Kronos timekeeping system. These pre-  
5 shift work activities take substantial time, ranging from 10 to 15 minutes per shift, or even  
6 longer. Before each shift and before clocking into the Kronos timekeeping system, Hourly  
7 Managers responsible for opening the retail store must undertake the following essential work  
8 tasks:

- 9 • Immediately upon arriving at the retail store, the Hourly Manager must  
10 perform a perimeter check of the premises by slowly driving their vehicle  
11 around the outer perimeter of the retail store to ensure that nothing out of the  
12 ordinary has occurred overnight (such as burglary, vandalism, weather-related  
13 damage, or anything else that could pose a safety hazard to employees or  
14 customers).<sup>1</sup> If the Hourly Manager spots anything out of the ordinary, they  
15 must exit their vehicle to investigate, and, if necessary, extinguish, remove or  
16 otherwise eliminate the safety hazard.
- 17 • After performing a perimeter check of the retail store's premises, the Hourly  
18 Manager must park their vehicle, walk to the main entrance of the retail store,  
19 and unlock the entrance using a key.
- 20 • After unlocking the main entrance, the Hourly Manager must walk to the  
21 alarm system and disarm the alarm by punching in a passcode (the Hourly  
22 Manager has one minute to disarm the alarm system before the alarm goes  
23 off).
- 24 • After disarming the alarm system, the Hourly Manager must walk back to the  
25 main entrance to let in any other employees who have arrived for the morning  
26 shift so that they can get into the store, stow their personal belongings, and  
27 clock in on time.
- 28 • Finally, the Hourly Manager must walk to Defendants' desktop computer, turn  
on/wake up the computer, open Google Chrome or Internet Explorer by  
clicking the Google Chrome or Internet Explorer icon, search for and log into  
the Kronos time and attendance software using a username and password, and  
click "Start Shift."

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<sup>1</sup> Hourly Managers must perform a perimeter check of the premises before *each and every*  
shift, not just the opening shift. This is because Defendants want Hourly Managers to be "aware"  
of the building and its surroundings before entering the retail store.

1           37. The Hourly Managers are not compensated for this time because they cannot log  
2 into the Kronos timekeeping system (i.e., “punch in” or “punch out”) until they are physically  
3 inside the retail store where Defendants’ desktop computer is available.

4           38. From the time that the Hourly Managers arrive to work and start performing the  
5 perimeter check of the premises until the time that they clock into the Kronos timekeeping  
6 system takes substantial time, ranging from 10 to 15 minutes per shift, or even longer if the  
7 Hourly Manager had to exit his or her vehicle to investigate or resolve a safety hazard, meaning  
8 that the Hourly Manager who opens the retail store performs a minimum of 10 to 15 minutes of  
9 off-the-clock work without compensation.

10           39. The unpaid off-the-clock work performed by Plaintiffs and all other Hourly  
11 Managers before their shifts directly benefits Defendants, and the tasks undertaken in connection  
12 with the off-the-clock work are integral and indispensable to their job duties and responsibilities  
13 as Hourly Managers.

14           **C. Meal-Period Off-the-Clock Work**

15           40. Defendants promise their Hourly Managers one unpaid 60-minute meal period  
16 each shift.

17           41. Under Nevada law, in order to deduct an unpaid meal period from an employee’s  
18 compensable time, an employee must be completely relieved of his or her employment duties for  
19 the entire meal break.

20           42. Because Defendants require the Hourly Managers to read and respond to work-  
21 related smartphone communications during their meal breaks, they must compensate them for  
22 that time worked during the meal period.

23           43. The work performed by Hourly Managers during their unpaid meal breaks takes  
24 substantial time, in the range of 5 minutes per shift or more, but Hourly Managers are not paid  
25 for this time.

26           **D. Post-Shift Off-the-Clock Work**

27           44. Plaintiffs and the Hourly Managers work a rotating schedule requiring them to  
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1 work five to six days per week and are required to close the retail store multiple times per week.  
2 For security reasons, Hourly Managers typically close the retail store in pairs, as it is rare for  
3 Hourly Managers to close the store alone.

4 45. Pursuant to Defendants' policies, training and direction, Hourly Managers  
5 responsible for closing the retail store are required to perform a series of essential work tasks  
6 *after* their scheduled shift and *after* clocking out of the Kronos timekeeping system. After each  
7 shift and after clocking out, Hourly Managers responsible for closing the retail store must walk  
8 to the alarm system and arm the alarm by punching in a passcode. Then, the Hourly Managers  
9 must walk to the main entrance, and, subsequent to exiting the store, close the main entrance,  
10 lock it using a key, and ensure that the main entrance is securely locked. This post-shift process  
11 takes substantial time, in the range of 2 to 3 minutes per shift, but can take upwards of 10 to 15  
12 minutes or more if the Hourly Managers encounter security issues while attempting to arm the  
13 alarm system.

14 46. Oftentimes, when attempting to arm the alarm system, the system will display a  
15 warning or error message alerting the Hourly Managers of a security issue, such as a partially  
16 open or unlocked door, that needs to be resolved before the system can be properly armed. The  
17 Hourly Managers must then walk to the area of the store that is the source of the security issue,  
18 resolve the issue, walk back to the main entrance where the alarm system is located, and arm the  
19 alarm system.

20 47. After arming the alarm system and securely locking the main entrance, it is not  
21 unusual for the Hourly Managers to observe unattended shopping carts or flatbeds in the parking  
22 lot because the hourly staff responsible for the carts either failed to retrieve them or retrieved  
23 them early and then there were late customers bringing carts out. Thus, it is not atypical for  
24 Hourly Managers to retrieve and collect shopping carts and flatbeds even after having already  
25 clocked out and locking the main entrance.

26 48. The unpaid off-the-clock work performed by Plaintiffs and Hourly Managers after  
27 their shifts directly benefits Defendants, and the tasks undertaken in connection with the off-the-  
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1 clock work are integral and indispensable to their job duties and responsibilities as Hourly  
2 Managers.

3 **E. Off-the-Clock Smartphone Communications**

4 49. In addition to the pre-shift, meal-period, and post-shift off-the-clock work  
5 activities described above, Hourly Managers are also required to perform substantial amounts of  
6 off-the-clock work when they are off-duty and not at the retail store.

7 50. Pursuant to Defendants' policies, training and direction, Hourly Managers are  
8 required to read and respond to work-related smartphone communications during non-work  
9 hours, including phone calls, emails, and text messages.

10 51. Reading and responding to these work-related messages during non-work hours  
11 takes substantial time, generally anywhere from 15 to 20 or more minutes per day, but Hourly  
12 Managers are not compensated for this time.

13 **F. Defendants Benefited from the Uncompensated Off-the-Clock Work**

14 52. At all relevant times, Defendants directed and directly benefited from the work  
15 performed by Plaintiffs and similarly situated employees in connection with the above-described  
16 off-the-clock activities performed by Hourly Managers.

17 53. At all relevant times, Defendants controlled the work schedules, duties, protocols,  
18 applications, assignments and employment conditions of their Hourly Managers.

19 54. At all relevant times, Defendants were able to track the amount of time Hourly  
20 Managers spent in connection with the off-the-clock activities. However, Defendants failed to do  
21 so and failed to compensate Hourly Managers for the off-the-clock work they performed.

22 55. At all relevant times, Hourly Managers were non-exempt employees.

23 56. At all relevant times, Defendants used their attendance and adherence policies  
24 against the Hourly Managers in order to pressure them into performing the off-the-clock work.

25 57. At all relevant times, Defendants' policies and practices deprived Hourly  
26 Managers of wages owed for the off-the-clock activities they performed. Because Defendants'  
27 Hourly Managers typically worked 40 hours or more in a workweek, Defendants' policies and  
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1 practices also deprived them of overtime pay.

2 58. Defendants knew or should have known that the time spent by Hourly Managers  
3 in connection with the off-the-clock activities was compensable under the law. Indeed, in light of  
4 Defendants' express instructions to the Hourly Managers that they were required to (a) perform a  
5 perimeter check of the premises before entering the retail store and clocking in, and (b) promptly  
6 respond to work-related smartphone communications during non-work hours, there is no  
7 conceivable way for Defendants to establish that they acted in good faith.

8 59. Despite knowing Hourly Managers performed work before and after their  
9 scheduled shifts and during their unpaid meal breaks, Defendants failed to make any effort to  
10 stop or disallow the off-the-clock work and instead suffered and permitted it to happen.

11 60. Unpaid wages related to the off-the-clock work described herein are owed to  
12 Hourly Managers at the mandated overtime premium of one and one-half their regular hourly  
13 rate because Hourly Managers regularly worked in excess of 40 hours in a workweek and/or 8  
14 hours in a day.

15 **RULE 23 CLASS ACTION ALLEGATIONS**

16 61. Plaintiffs bring this action pursuant to Fed R. Civ. P. 23(b)(2) and (b)(3) on behalf  
17 of the following putative Class ("Rule 23 Class"). The Rule 23 Class is defined as follows:

18 *All similarly situated current and former Hourly Managers who work or*  
19 *have worked for Defendants at any of their retail locations in Nevada at*  
*any time during the applicable statutory period.*

20 Excluded from the Rule 23 Class are Defendants' exempt executives and administrative and  
21 professional employees, including computer professionals and outside sales persons. Plaintiffs  
22 reserve the right to amend this definition as necessary.

23 62. *Numerosity:* The putative Class members from Nevada are so numerous that  
24 joinder of all members in the case would be impracticable.

25 63. *Commonality/Predominance:* There is a well-defined community of interest  
26 among Class members and common questions of *both* law and fact predominate in the action  
27 over any questions affecting individual members. These common legal and factual questions,  
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1 include, but are not limited to, the following:

- 2 a. Whether the off-the-clock time worked by the Rule 23 Class members in  
3 connection with the activities described in this Complaint is compensable  
4 time;
- 5 b. Whether the Rule 23 Class members are owed wages for the off-the-clock  
6 time worked in connection with the activities described in this Complaint;
- 7 c. Whether Defendants engaged in a policy or practice of failing to pay each  
8 Rule 23 Class member regular wages or minimum wage for each non-  
9 overtime hour worked;
- 10 d. Whether Defendants engaged in a policy or practice of failing to pay each  
11 Rule 23 Class member overtime compensation for each overtime hour  
12 worked; and
- 13 e. Whether Defendants should be required to pay compensatory damages,  
14 attorneys' fees, penalties, costs, and interest for violating the state laws  
15 and wage acts applicable to the members of the Rule 23 Class.

16 64. *Typicality*: Plaintiffs' claims are typical of claims of the Rule 23 Class they seek  
17 to represent in that Plaintiffs and all other members suffered damages as a direct and proximate  
18 result of Defendants' common and systemic payroll policies and practices. Plaintiffs' claims  
19 arise from Defendants' similar policies, practices, and course of conduct as all other Class  
20 members' claims and Plaintiffs' legal theories are based on the same or similar facts.

21 65. *Adequacy*: Plaintiffs will fully and adequately protect the interests of the Rule 23  
22 Class and have retained national counsel who are qualified and experienced in the prosecution of  
23 nationwide wage and hour class actions. Neither Plaintiffs nor their counsel have interests that  
24 are contrary to, or conflicting with, the interests of the Rule 23 Class.

25 66. *Superiority*: A class action is superior to other available methods for the fair and  
26 efficient adjudication of the controversy, because, *inter alia*, it is economically infeasible for the  
27 Rule 23 Class members to prosecute individual actions of their own given the relatively small  
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1 amount of damages at stake for each individual along with the fear of reprisal by their employer.

2 67. This case will be manageable as a Rule 23 Class action. Plaintiffs and their  
3 counsel know of no unusual difficulties in this case and Defendants and its corporate clients all  
4 have advanced, networked computer and payroll systems that will allow the class, wage, and  
5 damages issues in this case to be resolved with relative ease.

6 68. Because the elements of Rule 23(b)(3) are satisfied in this case, class certification  
7 is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393; 130 S.  
8 Ct. 1431, 1437 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff  
9 whose suit meets the specified criteria to pursue his claim as a class action”).

10 69. Because Defendants acted and refused to act on grounds that apply generally to  
11 the Rule 23 Class and declaratory relief is appropriate in this case with respect to the Rule 23  
12 Class as a whole, class certification pursuant to Rule 23(b)(2) is also appropriate.

13 **COUNT I**  
14 **RULE 23 CLASS ACTION**  
15 **VIOLATIONS OF THE NEVADA WAGE AND HOUR LAWS, NRS §§ 608.005, et seq.**  
16 **“NEVADA WAGE ACT”**

17 70. Plaintiffs re-allege and incorporate all previous paragraphs herein.

18 71. The Nevada Wage Act, NRS §§ 608.005, et seq. provides that employees are  
19 entitled to minimum wages “for each hour the employee works,” NRS § 608.016, and overtime  
20 compensation calculated at time-and-a-half of their regular rate of pay for each hour worked each  
21 week in excess of forty (40) or more than eight (8) hours in a day. NRS § 608.018.

22 72. NRS § 608.140 provides that an employee has a private right of action for unpaid  
23 wages. *See Neville v. Eighth Judicial Dist. Court of Nev.*, 406 P.3d 499, 504 (Nev. 2017).

24 73. At all times relevant to the action, Defendants were employers covered by the  
25 overtime and wage mandates of the Nevada Wage Act and the Rule 23 Nevada Class are  
26 employees entitled to the Nevada Wage Act’s protections. *See* NRS §§ 608.010, 608.011.

27 74. The Nevada Wage Act entitles employees to compensation for every hour worked  
28 in a workweek. *See* NRS §§ 608.012, 608.016.





1 the representatives of the Rule 23 Class, and undersigned counsel as Class counsel for the same;

2 D. Declaring Defendants violated the state wage and hour laws/acts of the states of  
3 Nevada as cited herein;

4 E. Declaring Defendants' violations of the state wage and hour laws/acts were  
5 willful;

6 F. Granting judgment in favor of Plaintiffs and against Defendants and awarding  
7 Plaintiffs and the Rule 23 Class the full amount of damages and liquidated damages available by  
8 law;

9 G. Awarding reasonable attorneys' fees and costs incurred by Plaintiffs in filing this  
10 action as provided by statute;

11 H. Awarding pre- and post-judgment interest to Plaintiffs on these damages; and

12 I. Awarding such other and further relief as this Court deems appropriate.

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**JURY DEMAND**

Plaintiffs, individually and on behalf of all others similarly situated, by and through their attorneys, hereby demand a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above-entitled cause.

DATED this 12th day of March, 2020.

**WOLF, RIFKIN, SHAPIRO,  
SCHULMAN & RABKIN, LLP**

By: /s/ Don Springmeyer

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